



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Long Term Control Plans/EPA Combined Sewer Overflow Policy: National Association of Clean Water Agencies' Amicus Brief Supporting San Francisco Challenge

10/08/2021

The National Association of Clean Water Agencies (“NACWA”) and other members of the organization filed an *amicus* brief (“Brief”) in the United States Court of Appeals for the Ninth Circuit in relation to an issue arising out of implementation of the United States Environmental Protection Agency (“EPA”) Combined Sewer Overflow (“CSO”) policy.

The Brief is filed in support of the City and County of San Francisco (collectively “San Francisco”) who are challenging a post-long term control plan (“LTCP”) associated with their Clean Water Act National Pollution Discharge Elimination System (“NPDES”) permit. See *City and County of San Francisco v. United States Environmental Protection Agency*, No. 21-70282.

A CSO is the discharge from a combined sewer system at a point prior to the public owned treatment works. A combined sewer system consists of a single set of pipes that convey both sanitary sewage and stormwater. CSO discharges occur when rainfall or snowmelt occurs, causing the system to be overwhelmed and discharge untreated sewage to rivers and streams. CSOs are point sources subject to NPDES permitting requirements including both technology-based and water quality-based requirements of the Clean Water Act.

EPA Region 9 and a California Regional Water Quality Board jointly authorized San Francisco to discharge from the City of San Francisco’s existing combined sewer system. The combined sewer system includes the wastewater treatment facility and its wastewater collection system.

The issues raised by San Francisco in challenging the LTCP include:

- Whether the EPA acted arbitrarily and capriciously, as well as contrary to the Clean Water Act, when it approved NPDES permit provisions generically prohibiting discharges that cause or contribute to exceedances of water quality standards without following its own regulations and without record support
- Whether EPA’s approval of a permit requirement to update San Francisco’s CSO LTCP was contrary to the Clean Water Act and otherwise arbitrary and capricious because EPA made no finding that San Francisco’s existing LTCP was not protecting water quality standards

- Whether the court's relief must reflect that San Francisco's NPDES permit is a single, individual permit that required authorization from both EPA and the State of California in order to be effective under the Clean Water Act

Many of NACWA's members own, manage, and operate combined sewer systems. The organization asserts that those members have spent billions of dollars upgrading systems consistent with LTCPS developed pursuant to EPA's CSO policy. Such efforts are stated to have resulted in substantial reductions in the number and volume of CSO discharges. As a result, NACWA argues that the Ninth Circuit's resolution of the issues could have:

. . . cascading economic and practical impacts on amici and the rest of the nearly 860 communities nationwide with combined sewer systems. . . as they continue to implement decades' worth of planning and protect billions of dollars in investments in clean water infrastructure.

A copy of the NACWA Brief can be downloaded [here](#).